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Supreme Court of the United States

OCTOBER TERM, 1967

No. 639

MRS. MINNIE BRADE GLONA,
Petitioner,

versus

AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF ON BEHALF OF RESPONDENTS.

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ARGUMENT.

MAY IT PLEASE THE COURT:

I. There Is No Federal Law In The Area Of Domestic Relations, Which Is Primarily A Matter Of State Concern.

It has been repeatedly held by this Court that there is no federal law of domestic relations and that the status of a party, even with respect to rights created by Federal Statutes, has to be determined by state law.

In the case of *Seaboard Airline Ry. v. Kenney*, 240 U.S. 489, 36 S.Ct. 458 (1916), in passing upon rights

conferred by the Federal Employers' Liability Act, this Court held:

> "There can now be no question that the act of Congress in so far as it deals with the subjects to which it relates is paramount and exclusive. It is therefore not disputable that recovery under the act can be had alone in the mode and by and for the persons or class of persons in whose favor the law creates and bestows a right of action. * * * But this is irrelevant, since the controversy concerns only the meaning of the act, which it is conceded, when rightly interpreted, is entitled to exclusive operation.
>
> "Plainly the statute contains no definition of who are to constitute the next of kin to whom a right of recovery is granted. But as, speaking generally, under our dual system of government, who are next of kin is determined by the legislation of the various States to whose authority that subject is normally committed, it would seem to be clear that the absence of a definition in the act of Congress plainly indicates the purpose of Congress to leave the determination of that question to the state law." 240 U.S. at 493-494, 36 S.Ct. at 459-460.

Again, in *De Sylva v. Ballantine,* 351 U.S. 570, 76 S.Ct. 974 (1956), in deciding who were "children" within the meaning of the Federal Copyright Act, 17 U.S.C. §24, this Court held:

> "We come, then, to the question of whether an illegitimate child is included within the term

'children' as used in §24. The scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law. Cf. Reconstruction Finance Corp. v. Beaver County, 328 U.S. 204, 66 S.Ct. 922, 90 L.Ed. 1172; Board of County Commissioners v. United States, 308 U.S. 343, 351-352. This is especially true where a statute deals with a familial relationship; there is no federal law of domestic relations, which is primarily a matter of state concern." 351 U.S. at 580, 76 S.Ct. at 980.

Finally, in the case of *Bell v. Tug SHRIKE*, 332 F.2d 330 (4th Cir., 1964), cert. den. 379 U.S. 844, 85 S.Ct. 84, this Court refused to review the judgment of the Court of Appeals for the Fourth Circuit which had held that a woman, who had entered into a bigamous marriage was not a "widow" under Virginia law and, therefore, not entitled to recover under the Jones Act.

Inasmuch as the legal status of the parties, even under federal acts, is governed by state law, it follows that the federal courts are bound by the decisions of the state courts defining the legal status of parties with respect to rights created by state law.

REPLY TO ISSUES RAISED BY PETITIONER.

I.

Petitioner's contentions that the interpretation accorded Article 2315 of the Louisiana Civil Code is contary to Civilian theories of interpretation and is in violation of the Fourteenth Amendment to the United States Constitution are without merit. These contentions will be answered in the order presented by the petitioner.

A. Introduction—Louisiana Approach.

The argument advanced by petitioner under this heading seems to be based on the allegation that the Louisiana courts, in denying recovery to illegitimate relations, have blindly adhered to *stare decisis* and have failed to interpret Article 2315 in light of "evolving social doctrine."

This argument is unsound as the very statutory law, Article 20 of the Louisiana Civil Code, cited by petitioner in support thereof, specifically prohibits the court from extending and/or narrowing a law by judicial construction. Article 20 provides that:

> "The distinction of laws into odious laws and laws entitled to favor, with a view of narrowing or extending their construction, cannot be made by those whose duty it is to interpret them."

An interpretation by the court extending Article 2315 of the Louisiana Civil Code so as to confer rights

thereunder upon parents for the death of their illegitimate children and/or upon illegitimate children for the deaths of their parents and/or in favor of any other illegitimate relation would be in clear violation of the legislative mandate set forth in Article 20.

That the Louisiana courts, in denying recovery in such cases, have not relied upon *stare decisis*, but on the statute itself, Article 2315 of the Louisiana Civil Code, is evidenced by the recent decision in the case of *Abraham v. Connecticut Fire Insurance Company*, 177 So. 2d 295 (La. App., 1965) wherein the Court stated:

> "The Statute being sui generis, this court is not at liberty to question the wisdom of the legislature in confining, restricting and limiting the benefits of the law to those classes of relations expressly enumerated. Conceding the authority of the legislature to include illegitimate relations within the scope of the statute if that body so desires, it nevertheless remains it has not as yet seen fit to do so. We can only conclude, therefore, that the legislature did not intend to extend to illegitimate or natural brothers and sisters the initial right of survivorship of those actions as encompassed in subject statute." 177 So.2d at 302.

Also, in the case of *Cheeks v. Fidelity & Casualty Company*, 87 So. 2d 377 (La. App.), decided in 1956,

the Court re-examined Article 2315 and, in denying recovery to natural parents for the death of their illegitimate son, declared that:

> "Since Lynch v. Knoop, supra, Article 2315 has been amended upon several occasions and the language used therein has never been enlarged or changed to include natural parents. This is indicative that our legislature was in accord with the judicial interpretations of the words used therein and did not desire to broaden them."

The legislative history of Article 2315 of the Louisiana Civil Code discloses that the statute has been amended a total of seven times[1] since its first enactment in 1855.[2] All of these amendments were designed to broaden the rights provided thereunder or to enlarge the class of beneficiaries. Notwithstanding the fact that the Louisiana courts have held consistently, since 1907,[3] that Article 2315 does not create a right or cause of action in favor of a natural mother for the death of her illegitimate child, no amendment has been made with reference thereto thus indicating that the courts have complied with the legislative intent of the statute.

In the case of *Lynch v. Knoop,* 118 La. 611, 43 So. 252 (1907), the court, in holding that a natural mother

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[1] In 1870, 1884, 1908, 1918, 1932, 1948 and 1960, see History and Text of Former Codes, West's L.S.A. Civil Code, Vol. 9 at pp. 84-85 and 1966 Cumulative Annual Pocket Part at pp. 11-12.

[2] La. Act 223 of 1855.

[3] The first case so holding was *Lynch v. Knoop,* 118 La. 611, 43 So. 252, decided in 1907.

may not recover for the death of her illegitimate child, stated as follows:

"In her petition the mother declared to the court that her child had been killed. If the maternity of a child may be acknowledged after the death of the child, it remains that, considered as a child acknowledged, she was not thereby legitimated. Even if the child has been acknowledged, the mother is not entitled to stand in judgment. A child must have been legitimated in order that the mother may stand in judgment. Was the child legitimated? It was not. Our reasons are the following:

The right of action, under Act No. 71, p. 94, of 1884, survives in the surviving mother and father. 'The right of this action shall survive in case of death in favor of the minor children.' Id.

This does not include the natural mother and natural father.

The articles of the Civil Code regarding the mother of legitimate children all refer to a lawful mother. The article of the Code relating to natural mothers and natural fathers is separate from those relating to the lawful mother and father.

The two, the mother and the natural mother, are treated in the Code differently or from a different point of view; one from the point of view that she has a natural right, the other that it is a

statutory right extending no further than the terms of the statute.

The following are some of the marked differences between the natural child and the legitimate child: The natural heir is to be recognized and to be placed in possession under special provisions of the law. He is a stranger to the succession from which he inherits until permission is obtained to exercise the right of an heir. It is different with the legitimate heir.

Originally the right to damages for personal injuries was not heritable. The statute has to some extent made it heritable, but it does not express the intention to include the natural mother as a person in whom the right survives, and without some expressed declaration in that respect it cannot be considered as secured under the terms of the statute. The terms of the act cannot be extended so as to include a natural mother or a natural offspring.

Legitimate relationship was the legislative intent.

The right does not survive in the mother further than it does in the natural child. Civ. Code, Art. 3556, No. 8.

Natural children, though recognized, are not children properly so called. The same is a logical conclusion as relates to the mother of the natural child."

Likewise, the Louisiana courts have held that under Article 2315 an illegitimate child has no right or cause of action for the death of its parent. *Levy v. State of Louisiana*, 192 So. 2d 193 (La. App., 1966), presently pending before this Court.[4]

Since Article 3556[5] of the Louisiana Civil Code of 1870 specifically excludes illegitimate children from the definition of "children"; there can be no question that the term "child", referred to in Article 2315, does not include illegitimate children.

Counsel for petitioner's argument that a natural mother should be granted recovery for the death of an illegitimate child simply because Article 2315 does not state "legitimate" father or "legitimate" mother is manifestly unsound and would result in an unconstitutional application of the statute. Under such reasoning, an illegitimate child would be precluded from asserting a cause of action for the death of its mother (see Article 3556, footnote 5), but a mother would be permitted to recover for the death of her illegitimate child, a result manifestly unconstitutional as denying one illegitimate recovery while granting it to another illegitimate. Considering that the illegitimate status of the child is created by the mother, such a suggested result is not only unconstitutional but grossly inequitable.

[4] No. 508 on the docket of this Court, October Term 1967.

[5] 3556 (8) Children.—Under this name are comprehended not only the children of the first decree, but the grandchildren, great-grandchildren, and all other descendants in the direct line. *Natural* children, even though recognized, make no part of the children properly so called, unless they have been legitimated.

B. Illegitimacy—An Inherently Suspect Classification.

While the Louisiana Civil Code classifies legitimates and illegitimates not only with respect to rights granted under the Wrongful Death Statute, but primarily in the area of descent and distribution, Louisiana has enacted a number of laws designed to elevate the illegitimate to legitimate: (1) A mother, giving birth to an illegitimate child, may legitimate the same by entering into a marriage with the father of the child and by formally or informally acknowledging the child. Louisiana Civil Code of 1870, Article 198. (2) Petitioner, even if unable to marry the father of her illegitimate son, could have legitimated the son by an act of legitimation passed before a notary and two witnesses. Louisiana Civil Code of 1870, Article 200; Louisiana Revised Statutes, Title 9 Section 391. (3) Petitioner and her husband Otto W. Glona, who is not the father of the child (A. 8) could have adopted the child, thereby conferring legitimate status upon him. La. Civil Code, Art. 214; La. R.S. Title 9 Sections 421 et seq.

The enactment of these statutes completely refutes petitioner's argument that Louisiana has engaged in purely prejudicial practices against illegitimates. On the contrary, realizing that legitimate relations form the basis of civilized society, Louisiana has protected the rights of legitimates against the claims of illegitimates. However, to balance the scales, Louisiana has done everything in her power to enable the natural parent to confer legitimate status upon his

or her illegitimate child, thereby correcting the moral wrong visited upon the child by the parent. Thus, petitioner's inability to assert a cause or right of action for the death of her illegitimate son resulted from her own actions and not those of the state legislature.

It is well established that a state has the right, under the Constitution, to enact legislation to protect the health, morals and general welfare of its citizens, which includes the right to legislate in the area of sexual conduct. *McLaughlin v. State of Florida*, 379 U.S. 184, 85 S.Ct. 283 (1964).

It is further established that the equal protection clause of the Fourteenth Amendment permits the state to classify, the only requirement being that the classification is based upon some reasonable basis. As was stated in *Morey v. Doud*, 354 U.S. 457, 463-464, 77 S.Ct. 1344, 1349 (1957):

> "The rules for testing a discrimination have been summarized as follows:
>
> '1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice

it results in some inequality. 3. When the classification in such a law is called in question if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78-79, 31 S.Ct. 337, 340, 55 L. Ed. 369.' "

Under the foregoing authorities, the issue before the Court is whether or not the classification into legitimates and illegitimates for purposes of the Louisiana Wrongful Death Statute has any reasonable basis at all or is based upon "pure prejudice" as argued by plaintiff. Petitioner bears the burden of proving that the law does not rest upon any reasonable basis at all, and such burden is certainly not satisfied by quoting statistics showing an increase in the illegitimacy rate and by merely labelling the law as prejudicial.

That Louisiana has not engaged in any prejudicial practices against illegitimates is amply supported by the fact that it has enacted various laws designed to encourage the elevation of an illegitimate to the status of a legitimate child, such as legitimation and adoption. In 1948 the legislature amended Article 198 of the Louisiana Civil Code to permit the legitimation of adulterous bastards, thus evidencing a policy

geared towards bringing the illegitimate into a legitimate family relationship.

By the same token, Louisiana, as any other state has a legitimate interest in protecting the general welfare and morals of its citizens, in preserving the family unit, protecting the marital relationship and in discouraging "bringing children into the world out of wedlock." *Levy v. State*, 192 So. 2d 193 (4th Cir., 1966). In enacting such laws, the State is allowed wide discretion. As was stated in the recent case of *McLaughlin v. State of Florida*, 379 U.S. 184, 191, 85 S.Ct. 283, 288 (1964):

> "Normally, the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious."

In the case of *McGowan v. State of Maryland*, 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1105 (1961) the Court in passing upon the constitutionality of the Maryland Sunday closing law, held that:

> "Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide discretion in enacting laws which affect some groups of citizens differently than others. The constitu-

> tional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality.
>
> *A statutory discrimination will not be set aside if any state of fact may be conceived to justify it.*" (Emphasis supplied.)

In the *McGowan* case, *supra*, the Supreme Court held that:

> "a legislature could reasonably find that the Sunday sale of the exempted commodities was necessary either for the health of the populace or for the enhancement of the recreational atmosphere of the day."

In the instant case, we submit that the classification into legitimates and illegitimates is reasonable in furtherance of the State's interest in promoting legitimate relationships and discouraging illegitimacy, and such classification certainly is not "wholly irrelevant" to the legislative purpose.

A system which would extinguish any classification between legitimates and illegitimates would undermine and endanger, if not destroy, the legal institution of marriage and the family unit, which gives moral support and stability to society in general. The principle that legislation for the protection of the fam-

ily is not only reasonable, but is necessary and desirable, was forcefully stated by this Court in the case of *Murphy v. Ramsey*, 114 U.S. 15, 45, 5 S.Ct. 747, 764 (1885) as follows:

> "Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, * * * than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy state of matrimony; the sure foundation of all that is stable and noble in our civilization."

C. Illegitimacy Has No Relationship To Wrongful Death Statute.

Petitioner urges that Article 2315 was enacted solely for the purpose of providing "a remedy for pecuniary losses occurring by reason of death" and that, consequently, this remedy should be available to all persons damaged irrespective of their legal status. Carrying this argument to its logical conclusion, anyone who has sustained a financial loss by reason of another person's death, be it a partner in a successful business, a dependent friend not related to a decedent, a charitable institution generously supported by a decedent, would be entitled to claim damages. Such is simply not the law either in Louisiana or in any of the other forty-nine states. All Wrongful Death Statutes, although differing from state to state, des-

ignate statutory beneficiaries.[6] Persons, who do not possess the necessary legal status, even though dependent, are precluded from recovery. This is true even under the Jones Act, 46 U.S.C. Section 688. In the case of *Bell v. Tug SHRIKE*, 332 F.2d 330 (4th Cir., 1964), cert. den. 379 U.S. 844, plaintiff claimed that she was entitled to be recognized as the deceased seaman's widow under the Jones Act based upon the following facts:

> "It is undisputed that John Ware Bell was married on three different occasions in the course of his lifetime. First, he contracted marriage in 1940, which was dissolved by divorce in June, 1951. He entered into his second marriage one week later, but he and his second wife were separated in 1954 and this marriage also was ended by divorce, on September 18, 1957. At issue in this case is a ceremonial marriage of the seaman to the appellant in Mathews County, Virginia, on December 13, 1956, when he was still legally married to the second wife. Between the date of the last-mentioned marriage and September 12, 1959, when the Tug SHRIKE capsized in the Chesapeake Bay, causing John Ware Bell's death, he and the appellant lived together in Norfolk, Virginia, and held themselves out to the community as husband and wife."

Plaintiff maintained that, although her marriage to the decedent was bigamous, a valid common-law marriage was created once the impediment was re-

[6] 22 Am. Jur. 2d "Death", Sections 47-48.

moved by divorce in 1957. The Court of Appeal held that there is no federal law of domestic relations and that since Virginia did not recognize a common-law marriage, plaintiff was not entitled to be recognized as the widow of the decedent under the Jones Act. The Court further stated as follows:

> "There is a certain appeal in the argument of the appellant that if she was actually dependent upon the deceased seaman she should be entitled to recover, especially as there is no other woman claiming as a widow. But the statute does not spread its benefits broadly according to dependency. Relationship is an essential factor under the statute, which speaks of a 'surviving widow.' Neither express language nor the term 'widow' in its ordinary use qualifies the survivor of a bigamous marriage as a widow. If the statute made only pecuniary loss the test rather than relationship, we would have a different case.* * *.
>
> While it is true that in the present instance no other woman is competing with the appellant for a share in the settlement fund, a decision according the appellant standing could operate to the detriment of claimants such as parents or next of kin in future cases." 332 F.2d at 336.

Thus it is seen that the right of recovery, even under the Jones Act, is not based upon dependency or restitution of damages, but is based upon the relationship required by the statute. Article 2315 has designated certain classes of beneficiaries who may assert a

cause of action for wrongful death. Loss of love and affection and loss of support are not the criteria which determine if a party has a cause and right of action. The only criterion is that a legal and legitimate relationship and, thus, the required status exists.[7]

Petitioner contends that the recovery awarded a Florida "common law" wife for a Louisiana wrongful death in the case of *Chivers v. Couch Motor Lines, Inc.*, 159 So. 2d 544 (La. App., 1964) belies "any public policy of this state against recovery by illegitimate children." In designating the children of a Florida common law marriage as "illegitimate", petitioner apparently overlooks that a common law marriage, where recognized, is as valid as a ceremonial marriage,[8] and the children of such marriage are legiti-

[7] By innuendo, petitioner is advancing the theory that Texas law should be applied in determining petitioner's status. (See p. 14 of Petitioner's brief.) This argument was not advanced in the trial court and when petitioner attempted to urge it on appeal, the Court of Appeal held: "Plaintiff argues for the first time on this appeal that the granting of the Rule 56 motion was erroneous for the reason that the laws of Texas should be applied in determining whether or not she has a right of action against defendants. Plaintiff's theory that the law of Texas should be applied even though the injury and death occurred in Louisiana is that, by reason of plaintiff's domicile, Texas has a more significant relationship with the occurrence than Louisiana, such an argument at this point is foreclosed. Upon being met with defendant's motion for summary judgment, plaintiff was authorized by Rule 56 to develop factually that the law of the domicile had a more significant relationship with the occurrence than the *lex loci delicti*. Plaintiff failed to do this, and such an issue was not raised upon the submission to the District Judge." (A. 16-17.)

[8] 55 C.J.S. Marriage, §6, pp: 816-819: "A common-law marriage may be briefly described as a marriage without formal solemnization, or without formalities. * * * Where recognized, common-law marriages are as fully valid as ceremonial marriages."

mate children. Thus, the plaintiff in the *Chivers* case, *supra*, was the legal wife of the decedent and her children were legitimate.

Petitioner next urges that Louisiana "dwells on fiction" in permitting recovery for the death of a child born to a married woman, although not of the union with her husband, but denying recovery for the death of a child born to an unmarried woman. Petitioner contends that "in the ordinary sense a married woman who gives birth to a child not the result of a union with her husband produces nonetheless an illegitimate child." (See p. 16 of petitioner's brief.) This argument, rather than supporting petitioner's claim that the State of Louisiana pursues a policy of prejudice against illegitimates, actually reflects the State's genuine concern and solicitude for the welfare of these children by considering them to be legitimate, Louisiana Civil Code of 1870, Articles 179, 184-192, even though they may be "in the ordinary sense illegitimate."

The reasonableness of the interpretation of Article 2315 in denying recovery for the death of illegitimate relations has to be considered in context with the policy of this State to encourage and protect legitimate relationships, to ensure the stability of the laws relating to succession and transfer of property rights and last, but not least, to discourage undesirable sexual conduct. This policy of the State is evidenced in the laws protecting children born to a married woman against bastardization. La. Civil Code of 1870, Article 184.

It is evidenced in the laws providing for forced heirship for legitimate relations, such as children and mother and father, La. Civil Code of 1870, Arts. 1493, 1494 and 1495.

It is evidenced in the laws providing for the establishment of a marital community of acquets and gains and protecting the rights of the spouses to the property acquired during the existence of the marriage, La. Civil Code of 1870, Article 2399 et seq., and by granting to the surviving spouse a usufruct on the property owned by the decedent, La. Civil Code of 1870, Art. 916.

It is evidenced in the laws of descent and distribution which protect the rights of legitimate children against the claims of illegitimates. La. Civil Code of 1870, Arts. 200, 918.

It is further evidenced by the Louisiana Workmen's Compensation Act, which does not recognize the natural parents as "mother" and "father",[9] and does not recognize an illegitimate child as a "child" within the definition of the Act, unless such child is *formally* acknowledged.[10] Again, the State has balanced the interests of the legitimates and the illegitimates with respect to rights accruing under the Workmen's

[9] *Ellis v. Union Compress & Warehouse Co.*, 178 So. 726 (La. App., 1938).

[10] La. R.S. 23:1021(3) "'Child' or 'children' covers only legitimate children, stepchildren, posthumous children, adopted children, and illegitimate children acknowledged under the provisions of Civil Code Articles 203, 204 and 205." Also, Fidelity and Casualty Co. of New York v. Ivory, 129 So.2d 894 (La. App., 1960).

Compensation Act. La. R.S. 23:1021 et seq. Since the Act is remedial legislation and is liberally construed, such persons, although not entitled to recover as "mother", "father" or "child" respectively, are entitled to recover as "dependents", *provided* the claims of the legitimate relations do not exhaust the statutory limit. See, *Fidelity and Casualty Co. of N. Y. v. Ivory*, 129 So. 2d 894 (La. App., 1960):

> "Hence we conclude and so hold that the compensation payable in the instant case shall be payable to, and for the use and benefit of, the three legitimate minors until they attain their eighteenth birthdays or until compensation payments are otherwise terminated as to them or any of them; and that, accordingly, as and when the maximum compensation payable is not consumed by the members of that class of claimants, then the difference or the remainder shall be payable to, and for the use and benefit of, the illegitimate dependents until the expiration of the statutory period of 400 weeks."

Thus, when considered in conjunction with those laws, it is apparent that the interpretation accorded Article 2315 is not only reasonable but is imperative to protect and preserve the integrity of the general laws governing marital and other legitimate relationships and to regulate the property rights flowing therefrom.

Petitioner's contention that she is an irregular heir of her deceased child is erroneous. A natural mother can only inherit from her illegitimate son if she

has formally acknowledged him. *Succession of Lacosst*, 142 La. 673, 77 So. 497 (1918). Petitioner only "informally acknowledged" the deceased. (A. 14.)

It is further urged by petitioner that Louisiana law permits an employer who has paid compensation benefits to the illegitimate children of the deceased worker to recover the payments from the tortfeasor, thus giving rights to an employer which are denied to the mother of an illegitimate child. This contention is not well founded. The employer has an independent right of action to recoup such payments, which right of action is not based on legal subrogation, but is an independent right which can be asserted through a direct suit against the tortfeasor. *Board of Com'rs. v. City of New Orleans*, 223 La. 199, 65 So. 2d 313 (1953). The Wrongful Death Statute and the Workmen's Compensation Act were enacted for different purposes, confer different rights and are subject to different construction. One was enacted in derogation of common and civil law and is limited to legitimate relations; the other is remedial legislation, is liberally construed and encompasses dependent illegitimates under certain conditions.

In attacking the classification of legitimates and illegitimates as invidious discrimination, petitioner completely ignores the fact that, under Louisiana law, a parent of an illegitimate child has almost unlimited power to confer legitimate status upon the child. In 1948 the legislature amended Article 198[11] of

[11] Act 482 of 1948.

the Louisiana Civil Code to permit the legitimation of adulterous bastards. Consequently, any disadvantages visited upon the mother of an illegitimate child do not result from the classification made by the State, but result solely and only from the failure of the parent to confer legitimate status upon the child. While the legislature has provided for a re-classification by simple and expeditious means, the parent alone has perpetuated the illegitimate status of the child.

CONCLUSION.

There is no federal law in the area of domestic relations, nor does the Constitution prohibit reasonable classification. The State has the absolute and final authority to determine the legal status of persons with respect to rights conferred under the Wrongful Death Statute as well as with respect to descent and distribution and transfer of property. The requirements of due process and equal protection are satisfied by the enactment of state laws permitting persons to acquire legitimate status and all rights flowing from such status.

It is submitted that the classification of legitimates and illegitimates, far from being arbitrary and capricious, is based upon sound public policy, namely the preservation of the integrity and the rights flowing from legal relationships and the discouraging of promiscuity, bigamy, adultery, illegitimacy and other undesirable consequences of uncontrolled sexual conduct. If a state has the right to enact laws con-

trolling and criminally punishing undesirable sexual conduct and laws prescribing the prerequisites of legal marriages, there should be no doubt that the state has the constitutional power to regulate what rights, if any, should flow from illegitimate relationships.

For the reasons herein stated, the judgment below should be affirmed.

Respectfully submitted,

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CERTIFICATE.

I HEREBY CERTIFY that a copy of the foregoing brief has been served on Leonard Fagot, Esq., and William F. Wessel, Esq., 1605 National Bank of Commerce Building, New Orleans, Louisiana, and on Benjamin E. Smith, Esq., 1006 Baronne Building, New Orleans, Louisiana, by depositing same in the U. S. Mail, postage prepaid, addressed as above, this ... day of February, 1968.

FRANK S. NORMANN.